layer having a post-consumer recycled ("PCR") polyethylene resin. Futher, wherever the PCR-containing layer occurs, the container has a substantially continuous film of fluorinated polyethylene. This fluorinated polyethylene is located toward the interior of the container from the layer with the PCR material. The fluorinated layer has the purpose and effect of reducing the migration of possible contaminants from the PCR polyethylene into the container's interior and especially into material within the interior.

As the examiner correctly states, Mehta et al. disclose a container having an outer layer of polypropylene and an inner layer of polyethylene. The interior surface of the container, composed of the polyethylene, has undergone reaction with fluorine to result in a fluorinated polyethylene.

In Mehta et al., the fluorinated polyethylene has the purpose of preventing the "scalping of flavor or aroma components (of the container's contents) into the walls of plastic container . . . ." (See column 1, lines 11-12.) "The interior fluorinated polyethylene layer imparts the container with good flavor/aroma barrier properties . . . ." (Col. 2, lines 44-46.) In other words, the fluorinated polyethylene simply prevents the loss of the minute amounts of flavor and aroma compounds *from* the container's contents *into* the container's wall. The barrier prevents the absorption of these ingredients by the wall.

Clearly, Mehta et al. nowhere suggest that a fluorinate polyethylene layer can prevent the migration of very undesirable contaminants from a PCR layer *into* the contents of the container, and do so with sufficient effectiveness that the container may then hold a liquid that will be ingested by humans. In fact, Mehta et al. simply do not even consider PCR's let alone the migration of contaminants from PCR's into materials held by a container constructed, in part, from such PCR's with contaminants.

Moore et al. do not supply or overcome the deficiencies of Mehta et al. Moore et al. show a container composed of PCR's "to package liquid detergent products . . . ." (Col. 1, lines 24-25.). The container, as is Moore et al.'s Figure 3, may find use without any inner layer over the PCR whatsoever. Alternately, the inside of the container may have a layer of virgin polyethylene (Figure 3) to protect the contents of the container or of nylon (Figure 4) to allow the container to "hold solvent products such as petroleum distillates." (Col. 5, line 25.)

In light of the above, the rejection over this combination of references should be withdrawn. First, the two references simply cannot combine. Mehta et al.'s containers hold ingestible liquids where the fluorinated surface reduces the absorption *from* the liquid *into* the container of flavor and aroma molecules. In distinction, Moore et al. present containers to hold detergents or solvents such as petroleum distillates. The use of flavor/aroma scalper preventatives of the former has no use whatsoever in the latter. In other words, there is no suggestion or reason to combine the references.

Second, even were the two references to combine, they would still have no suggestion that a layer of fluorinated polyethylene would prevent or reduce the migration of PCR contaminants from a container wall into the material inside the container. In fact, taking the two references together, there is no suggestion that the fluorinated polyethylene prevents the migration of anything from the container wall into the container's contents, and can do so to leave the container's contents fit for human consumption. In fact, Moore et al. teach that polyethylene itself (as in their Figure 2) suffices as a protective layer. Accordingly, the references, whether taken alone or together, fail to teach the utility of fluorinated polyethylene as a barrier to the migration of PCR contaminants. Moreover, the references teach away from

Applicant's claims by utilizing polyethylene without fluorination as a barrier for PCR-containing material. Accordingly, the rejection should be withdrawn.

In addition to the above, the references, in light of the above, clearly cannot teach using a fluorinated polyethylene to protect a container's contents from the levels of contaminants set forth in Claim 46 or where the PCR constitutes the weight percents of the container of Claims 49 and 50. Nor does the combination show any utility for the level of PCR contaminant recited in Claim 58. For these reasons as well, these claims show patentable merit over the cited references.

Claims 55 and 56 were rejected under 35 U.S.C. § 103(a) as obvious over Mehta et al. in view of Moore et al. and Avery. Applicant respectfully traverses this rejection. Avery simply does not teach the ability of fluorinated polyethylene to prevent or minimize the migration of PCR contaminants into a container's contents intended for human consumption. Accordingly, it cannot supply the deficiencies of the combination of Mehta et al. and Moore et al. discussed at length above. As the examiner silently concedes, the referenced column 9, lines 32 to 50, of Avery, even taken at face value, does not set forth the objective or the accomplishment of the specific barrier properties set forth in Claims 55 and 56. For this reason too, the rejection must fail.

Finally, the statement on page 6, the second half of the first full paragraph, of the rejection ("It would have been obvious . . . is not capable of performing the claimed function.") constitutes the use of hindsight to create Applicant's invention. Such an approach is strictly forbidden. Further, the prior art structure of Mehta et al. is irrelevant since it contains no fluorinated polyethylene. Also, the reference to Avery, col. 10, lines 30 to 32, in the rejection simply misses the point of this passage. All it says is that the contaminated must not be exposed

through the covering sheath. It has no relationship to thickness, as suggested by the rejection. For all of these reasons, the rejection of these claims should be withdrawn.

Claims 57 and 59 were rejected under 35 U.S.C. § 103(a) as obvious over Mehta et al. in view of Moore et al. and Strum et al. Applicant respectfully traverses this rejection.

As discussed above, the combination of Mehta et al. and Moore et al. fail to teach the basic elements of Applicant's claimed invention. Strum et al. have no teaching of fluorinated polyethylene as a barrier to the migration of PCR contaminants into a container's contents and thus simply fail to supply the deficiency of the prior combination. In fact, Strum et al. merely relate to extruding a multilayer container with the intermittent inclusion of one or more layers into the structure. Strum et al.'s barrier layer, such as ethylene/vinyl alcohol copolymer (col. 5, lines 5-6) represents a standard barrier to oxygen, not PCR contaminants. Additionally, in Strun et al, "the reground material [is] recovered from by trimming the parison in the process of blowmolding articles therefrom." (Col 1, lines 44 to 46.) Thus, the reground material has never seen consumer use and thus simply does not constitute "PCR". As a result, Strum et al. add nothing to the combination of Mehta et al. and Moore et al. Thus, the rejection based on this combination of references should be withdrawn.

Applicant has reviewed the three Ofstein patents. He agrees with the examiner that they have less pertinence than the other cited art.

Applicant believes that the above should place his application in condition for allowance. However, if some minor impediment prevents this action, the examiner is then respectfully requested to telephone Applicant's attorney at the number given below. This would portend the saving of substantial effort and cost on the part of both the Patent and Trademark Office and Applicant.

The present paper appears to respond timely to the June 28, 2001, Office action. Accordingly, no extension fee appears required. However, should that prove that incorrect, then any required extension fee may be charged to Deposit Account 06-2135 of the undersigned attorney.

Respectfully submitted,

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CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the U. S. Postal Service as first class mail in an envelope with sufficient postage and addressed to:

The Commissioner of Patents and Trademarks
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on September 28, 2001.

Eugene F. Friedman